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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,794	03/23/2001	Thomas Jefferson Bush III		5695

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THOMAS L. KIRSCH & ASSOCIATES
131 RIDGE ROAD
MUNSTER, TN 46321

EXAMINER

PEREIRO, JORGE ANDRES

ART UNIT	PAPER NUMBER
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3743

MAIL DATE	DELIVERY MODE
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10/05/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/815,794	Applicant(s) BUSH, THOMAS JEFFERSON	
	Examiner JORGE PEREIRO	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 July 2010 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 8 is dependent on itself which causes the claim to be indefinite. Based on an analysis of the claim limitations and in the interest of advancing the prosecution of the present application the examiner interprets claim 8 as depending from claim 7.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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5. Claims 5-8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Reissue Patent US RX00026 I2 to Williamson (hereinafter "Williamson") in view of US Patent US 3,236,172 to Haedike et al. (hereinafter "Haedike").

6. In re Claims 5-8 and 10, Williamson discloses a device useful as a barbeque pit, comprising: an enclosure (see figs. 1 & 3, and A, B, C, D) having an upper end and a lower end (see at least fig. 3), said upper end having an open section (see again fig. 3) and said lower end having an open section (see E, W, E', W'); a grill (K) removably mounted within said opening of said upper section of said enclosure, said grill for cooking food thereon; a firebox (F, G, L, M) for containing therein a consumable fuel source that provides a source of heat for cooking food placed on said grill (see pg. 1, right hand column, first full paragraph), said firebox being an independent structure from said enclosure (see at least fig. 1), wherein said firebox is temporarily positioned inside said open section of said lower end of said enclosure during use of said pit (see again pg. 1, right hand column, first full paragraph) and includes a means (H, L, S) for expeditiously removing said firebox from said enclosure during and after use of said pit; wherein said firebox further includes support wheels (see again H, L, S) and a handle (see fig. 1) as a means to facilitate expeditious removal of the firebox from said enclosure (see again pg. 1, right hand column, first full paragraph); wherein said firebox further includes a removable fuel grate (c) that is disposed within the firebox; wherein said firebox includes a pair of opposed rails (see again pg. 1, right hand column, first full paragraph) attached within said firebox, said rails supporting said removable fuel grate.

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7. However, Williamson does not disclose that said firebox comprising a watertight, unitary structure for holding water therein while said pit is in use; wherein water contained within the firebox during use of said pit generates steam that assists in cooking food placed on the grill.

8. Nonetheless, Haedike teaches a steam cooker wherein a firebox (13) comprising a watertight, unitary structure for holding water therein while the cooker (10), of which it forms part, is in use; wherein water contained within the firebox during use of said cooker generates steam that assists in cooking food placed on a grill (see 14, 27, 28).

9. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Williamson wherein said firebox comprising a watertight, unitary structure for holding water therein while said pit is in use; wherein water contained within the firebox during use of said pit generates steam that assists in cooking food placed on the grill as taught by Haedike, since such a modification would enhance the functionality of said device by providing an alternate (*i.e.*, steam) cooking method.

10. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Williamson in view of Haedike as applied to claim 1 above, and further in view of US Patent US 4287870 to Johnson (hereinafter "Johnson").

11. In re Claim 9, Williamson in view of Haedike discloses all of the claim limitations except for wherein said upper end of said enclosure further includes a pair of sliding doors for enclosing the open section.

12. Nonetheless, Johnson teaches a barbeque comprising an enclosure (90) wherein an upper end of said enclosure further includes a pair of sliding doors (102) for enclosing the open section.

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13. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Williamson wherein said upper end of said enclosure further includes a pair of sliding doors for enclosing the open section as taught by Johnson, since both Williamson and Johnson teach doors or means of closing and opening the interior of said enclosure, it would have been obvious to one skilled in the art to substitute one access means for the other to achieve the predictable result of gaining or restricting access to the interior of said enclosure.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please see form PTO-892 (Notice of References Cited) attached to, or included with, this Office Action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JORGE PEREIRO whose telephone number is (571) 270-3932. The examiner can normally be reached on Mon.-Fri. 9:00 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Rinehart can be reached on 571-272-4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jorge Pereiro
Examiner
Art Unit 3743

/Kenneth B Rinehart/
Supervisory Patent Examiner, Art Unit 3743